

PARKER AND CARMODY, LLP
ATTORNEYS AT LAW
850 THIRD AVENUE
14TH FLOOR
NEW YORK, N.Y. 10022

DANIEL S. PARKER
MICHAEL CARMODY
CHRISTINA S. COOPER

TELEPHONE: (212) 239-9777
FACSIMILE: (212) 239-9175
DanielParker@aol.com

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By ECF and email

Hon. Lisa Margaret Smith
United States Magistrate Judge
Southern District of New York
300 Quarropas Street
White Plains, NY 10601

**Re: United States v. Richard Emanuel
20 Cr 0048 (NSR)**

Dear Judge Smith:

I write on behalf of Richard Emanuel (“the defendant” or “Mr. Emanuel”) and as a follow-up letter, supplementing the application (Dkt. No. 13) filed April 1, 2020.

In the past two weeks, there have been a multitude of submissions made by the Government, including the one filed in this case (Dkt. No. 11 dated March 30, 2020 and attached to defendant’s motion as Exhibit B), in which the Government asserts, *inter alia*, that “officials at the WCJ suggest that the jail has taken timely, appropriate steps to handle COVID19.”

In its letter dated March 30th, the Government claims at page 4:

At the moment, only two inmates, in the entire facility, have tested positive. Importantly, the WCJ has represented that it has drastically cut back on the number of new inmates it has accepted and further represented that any new inmates are quarantined from the rest of the inmate population for two weeks. In addition, the WCJ has suspended certain activities which require interaction among inmates and taken heightened measures to clean and sanitize parts of the jail. Despite all this, the WCJ still has kept in place procedures for attorney visits (in a no-contact setting), phone calls, and secure videoconferencing. Simply put,

there is nothing outside of speculation at this point to suggest the WCJ is unprepared to handle COVID-19 while maintaining attorney access for inmates.

What is readily apparent is that the information being provided to the Government from officials at the WCJ¹ and the Federal BOP is not only inaccurate, but completely unreliable.

Just today, the media reported that there are 23 Westchester County Jail workers and 6 inmates who have tested positive for the coronavirus.² Yesterday, officials at the MDC in Brooklyn revealed to Judge Kovner that it had tested only two additional inmates — out of 1,700 — after five staff members and one prisoner were found to be infected with the coronavirus³.

There is no information about the number of inmates, if any, who have been tested in the WCJ.

In addition, anecdotal reports from inmates at the WCJ and attorneys who have spoken with them suggest that there are gross failures to protect inmates from this potentially life-threatening virus – and in this case, a threat more real given Mr. Emanuel’s compromised and pre-existing health condition.

Among the claims being made are reports of no lockdown in the WCJ, no significant changes in the cleaning or sanitizing of the units, a lack of gloves and masks, continuing inmate movement between units, continuing movement of guards within the facility, a lack of hygiene with respect to telephone use and an overall and utter failure to adequately address the continuing health crisis.

¹ Mr. Emanuel is a federal inmate, currently being detained at the WCJ.

² <https://www.lohud.com/story/news/coronavirus/2020/04/02/westchester-jail-coronavirus-inmates-officers/5108859002/>

³ https://www.law360.com/newyork/articles/1259489/prison-says-it-tested-just-2-more-inmates-despite-virus-cases?nl_pk=42bade0b-3cf7-4044-84d9-11f6adc34b2f&utm_source=newsletter&utm_medium=email&utm_campaign=newyork&read_more=1

Today, E.D.N.Y. Chief Judge Mauskopf issued an Administrative Order, attached hereto as Exhibit A, calling for twice weekly status reports “concerning the incidence of infection of COVID-19 at each facility and the measures undertaken to mitigate the spread of COVID-19 within each facility.” This Order does not apply to the WCJ, only the MCC, the MDC and the federally run GEO facility in Queens. Many of the precise issues that concerned Judge Mauskopf are the exact same issues which concern counsel about the WCJ.

In an effort to ascertain the actual facts of what is transpiring behind prison walls, in an effort to provide the Court with reliable information upon which it can evaluate the emergency bail requests, and in an effort to “flatten the curve” with respect to inmates, correction officers, and the community, we ask the Court order a person with actual knowledge of the complete situation at the jail provide specific *sworn testimony* at Mr. Emanuel’s bail hearing with answers to the following pertinent questions as of today’s date.

1. How many inmates at WCJ have been tested for COVID-19, symptoms or the outcomes of those tests?
2. How many inmates at the WCJ have tested positive for COVID-19?
3. What was done with those inmates who tested positive to treat them and to isolate them from other inmates?
4. How many inmates at the WCJ have been segregated from other inmates because of suspicion of medical personal that the inmate exhibited symptoms consistent with, or may be positive for, or is awaiting test results for COVID-19?
5. What was done with those inmates to treat them and to isolate them from other inmates?
6. How many staff at WCJ have been tested for COVID-19, regardless of symptoms or the outcomes of those tests?
7. How many staff at the WCJ have tested positive for COVID-19?

8. What was done with those staff members to treat them and to isolate them from the inmates?

9. How many staff at the WCJ have been segregated from the inmates because of suspicion of medical personal that the staff member exhibited symptoms consistent with, or may be positive for, or is awaiting test results for COVID-19?

10. What was done with those staff to treat them and to isolate them from the inmates?

11. Has any person who at any point tested positive for COVID-19, or exhibited symptoms consistent with COVID-19, exposed Richard Emanuel to the coronavirus?

12. What tests have been done on Mr. Emanuel to determine if he has COVID-19, whether or not he is exhibiting/has exhibited any symptoms consistent with infection by the coronavirus?

13. What is the current state of protection given to Mr. Emanuel to safeguard him from being exposed to, and treated for (if necessary) the coronavirus?

14. What are the cleaning and hygiene protocols for the living, eating, bathing, and all other areas that Mr. Emanuel uses on a daily basis?

15. What are the cleaning and hygiene protocols for the living, eating, bathing, and all other areas that all other inmates and staff use who may come into contact with Mr. Emanuel on a daily basis?

16. When any person (staff or inmate) is either suspected of being positive for, or regardless of confirmed positive for COVID-19, what is done to clean their sleeping area, living area, work area, and personal effects to make them safe and not contagious to others, considering the apparent viability of coronavirus on hard surfaces beyond direct contact with the person?

Without the information to be learned from the above questions and the others the Court deems appropriate, I respectfully suggest that the record of the current state of the crisis at WCJ cannot be truly known, and reliable information about these critical questions is necessary to assist the Court in making a decision on the merits of the defendant's motion.

I thank the Court for its consideration of, and attention to, this matter.

Respectfully submitted,

/s/ Daniel S. Parker
Parker and Carmody, LLP
850 Third Avenue
14th Floor
New York, NY 10022
Tel. 212-566-6213

Cc: AUSA Shiva Logarajah (BY ECF and email)

David Patton, Attorney in Charge, Federal Defenders Office